

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

SCOTT LAUTENBAUGH, on behalf of)
himself and the class he seeks to)
represent,)

Plaintiff,)

V.)

NEBRASKA STATE BAR)
ASSOCIATION, *et. al.*,)

Defendants.)

Case No. 4:12-cv-03214-RGK-CRZ

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Nebraska State Bar Association ("NSBA"), Warren R. Whitted, Jr., Marsha E. Fangmeyer and G. Michael Fenner (collectively "Defendants"), move this Court for an order dismissing all counts of Plaintiff's Complaint. Dismissal is appropriate under the abstention doctrines set forth by the United States Supreme Court in *Colorado River Water Conservation District v. United States* and *Younger v. Harris* because Plaintiff is currently pursuing a parallel action before the Nebraska Supreme Court which raises issues that are identical to the allegations in Plaintiff's Complaint. Further, because Mr. Whitted, Ms. Fangmeyer and Mr. Fenner are being sued in their official capacity only, the claims against them are redundant of Plaintiff's claims against the NSBA and should be dismissed. For these reasons, fully explained in Defendants' Memorandum of Law in Support of Motion to Dismiss, Plaintiff's Complaint should be dismissed.

WHEREFORE, Defendants Nebraska State Bar Association, Warren R. Whitted, Jr., Marsha E. Fangmeyer and G. Michael Fenner respectfully request that this Court grant Defendants' Motion to Dismiss Plaintiff's Complaint and dismiss Plaintiff's claims in their entirety and/or dismiss Plaintiff's claims against Defendants Warren R. Whitted, Jr., Marsha E.

Fangmeyer and G. Michael Fenner in their individual, official capacity, and for any further relief that the Court deems just and appropriate.

Respectfully Submitted,

STINSON MORRISON HECKER LLP

By: /s/ Bryan S. Hatch
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2012, the foregoing was filed electronically with the Clerk of Court to be served on all parties of record by operation of the Court's electronic filing system.

/s/ Bryan S. Hatch